

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.729 OF 2007

Shri Nitendrasingh @ Nitin Kumarsingh
Patil

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Ms. Asmita Sarangdhar for the petitioner.

Mr. D.S. Mhaispurkar, A.P.P. for the State.

**CORAM : SMT. RANJANA DESAI &
D. B. BHOSALE, JJ.**

DATED : 4TH MAY, 2007.

P.C.:-

1. We have heard Ms. Sarangdhar, the learned counsel appearing for the petitioner at great length and Mr. Mhaispurkar, the learned A.P.P. appearing for the State. We have also perused the affidavit of Sadashiv Dyaneshwar Sahasrabudhe, the Deputy Assistant (Crime) of Group "B" Gazetted Officer, attached to the office of the Director General of Police, Maharashtra State, Mumbai.

2. It was argued by the learned counsel for the petitioner that the FIR in question was filed by the Investigating Agency merely because this court has orally directed that prima facie apart from the departmental enquiry, the

prosecution is also tenable as the applicant and other officers have also committed criminal acts. The learned counsel for the petitioner relied on an affidavit filed by A.G. Sawant, Deputy Assistant (Establishment) in the office of the Director General of Police, Maharashtra State, dated 22/1/2007 in the proceedings before the Maharashtra State Administrative Tribunal at Mumbai. We have perused the said affidavit and the relevant paragraph where such statement is made. We had, therefore, asked the learned A.P.P. whether the complaint is filed only because of the view allegedly expressed by this court or whether there is any material to file the said complaint. Pursuant to our query, the above-referred affidavit of Sahasrabudhe came to be filed. We have perused the said affidavit and in particular paragraph 3 thereof. At this stage, prima facie, we are satisfied with this explanation. It appears that the view allegedly expressed by this court is not the only reason why the FIR was filed by the Investigating Agency.

3. So far as the prayer for quashing of the complaint is concerned, we feel that no case is made out for quashing and, therefore, that prayer cannot be granted. It was also strenuously urged by the learned counsel for the petitioner that the petitioner is being harassed by the Investigating Agency inasmuch as on the same allegations two separate complaints are being investigated by the police. Our attention has been drawn by the learned counsel for the petitioner to the complaint filed by B.T. Baravkar, the Assistant

Police Inspector, Manor Police Station and also to the complaint filed by Sandeep Singh before the 7th Metropolitan Magistrate Court at Dadar, Mumbai, in December, 2004. Admittedly the allegations are same. However, whereas in the complaint filed by Baravkar, only three accused are named, in the complaint filed by Sandeep Singh apart from the three persons whose names are appearing in the complaint of Baravkar, there are seven more persons named as accused, which are found in paragraph 9 of the said complaint. The learned counsel for the petitioner submitted that the police are trying to shield the other accused and no investigation is carried out in respect of those officers though order under section 163(3) was passed on 17/6/2005. In response to this, the learned A.P.P. on instructions from Mr. Bagalkot, D.Y.S.P., State CID, states that the police will make appropriate application under section 210 of the Code of Criminal Procedure (for short, "the Code") and under other provisions of the Code before the concerned Metropolitan Magistrate for appropriate orders for making the allegations in the private complaint as part of the present investigation and the police shall file a report to the appropriate court. If such application is made, we direct the learned Magistrate to pass appropriate orders thereon as expeditiously as possible and in accordance with law. The learned A.P.P. states that the investigation will be completed within a period of six months from today. This statement is accepted. In view of this, nothing survives in this petition. The petition is disposed of.

AJN

[SMT. RANJANA DESAI, J.]

[D. B. BHOSALE, J.]